Ontario

Office of the Conflict of Interest Commissioner

Bureau du commissaire aux conflits d'intérêts

Annual Report - 2015-2016

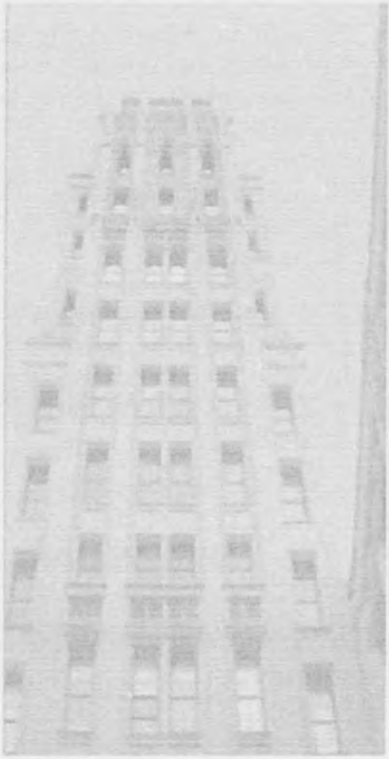
Commissioner's Message

It is my pleasure to present the 2015/16 Annual Report of the Office of the Conflict of Interest Commissioner. 2015/16 was a particularly busy year for our office as we handled 432 matters, the most in any single year in our office's nine-year history. That represents a 69% increase over our previous busy year of 2014/15 when we handled 295 matters. In addition to the review of these important ethical issues (conflict of interest, political activity and financial declarations), we implemented a revamped orientation session for newly appointed and re-appointed ethics executives and managed to orient 75 officials in two sessions held this year.

I am proud to report that in 2015/16, our office began the implementation of a new paperless recordkeeping system. This included the adoption of a new functional classification scheme, new recordkeeping policies and a new records retention schedule for our case files. This makes our office one of a very few in the Ontario Public Service to be fully electronic, improving our efficiency and also allowing us to make a significant contribution to the reduction in paper consumption.

Finally, I am particularly excited about the progress we made in 2015/16 in our plans to host, in partnership with other levels of government and the academic institutions of York University and the University of Toronto, a major conference on public sector ethics scheduled for September, 2016. This is something we look forward to delivering and reporting on in the next Annual Report 2016/17.

Sidney B. Linden - Commissioner



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Mandate and Vision of the Office

The Office of the Conflict of Interest Commissioner ensures that the mandate of the Commissioner as set out in the *Public Service of Ontario Act, 2006* (PSOA) and its regulations and in the *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009* (ATAGAA), is implemented.

The vision of the office is to have a province where people trust government. In order to achieve this vision, the office works to deliver on the following three objectives:

1. Contribute to public servants' understanding of, and compliance with, ethics rules;
2. Encourage excellence and consistency in the application of ethics rules; and
3. Be a leader in promoting ethical conduct

This annual report summarizes the Office's activities in the 2015-16 fiscal year that were focused on delivering on these objectives.

Our Vision: A Province where people trust government

Objective 1: Contribute to understanding and compliance with ethics rules

Through interactions with individuals on specific matters, the office seeks to increase understanding and compliance with ethics rules.

- The commissioner provided conflict of interest/political activity (COI/PA) advice to 50 current and former public servants, and determinations as ethics executive to 15 current and former public servants.
- The commissioner responded to 55 information requests.
- The commissioner reviewed 278 financial declarations filed by public servants and notified their respective ethics executives of their compliance with fulfilling their obligation.

The Office also makes it a priority to provide training to ethics executives. This function is particularly important for public bodies that don't always have access to training and information that is available within ministries.

- The commissioner provided PSOA training to 75 ethics executives and other senior public servants in public bodies.

COIC VALUES

The OCOIC has established the following values to guide the Office as it delivers on its mandate:

Efficient — We maximize our resources to deliver quality service.

Transparent — Our procedure are accessible, easy to understand and open.

Helpful — We strive to provide advice and determinations that are helpful to public servants, taking a non-adversarial approach.

Independent — Our decisions are free form the control or influence of others.

Consistent — We apply our knowledge of conflicts in a consistent manner.

Strategic — We leverage our unique position within Ontario's ethical framework.

Objective 2: Encourage excellence and consistency in application of ethics rules

The Office is in a unique position to observe the application of ethical rules across ministries and public bodies. As a result, the Office is able to recommend systemic changes that could be implemented to support consistent rule interpretation and application as well as opportunities for public servants to learn from each other.

- The Office worked with TBS and the Public Service Commission to implement the financial declaration process in ministries and its expansion to public servants who work in public bodies.

- The Office successfully secured the commitment of the CAO Forum to champion the "shared stories" initiative in which case summaries will be compiled and shared in a manner that supports consistent interpretation and application of the rules.

....most people in government want to do the right thing simply because it is right.
Commissioner's blog, June 9, 2015

- Public bodies are permitted to develop their own conflict of interest rules for approval by the commissioner, as long as those Rules do not set a standard for ethical conduct that is lower than in the PSOA and its Regulations. In 2015/16, only one set of ethics rules were submitted and approved by the commissioner. Altogether, nine public bodies or groupings of public bodies have their own ethics rules, and all are available on our website.

- Under ATAGGA, the commissioner also must approve the ethics plans of administrative tribunals. All administrative tribunals now have ethics plans. In 2015/16, no amended ethics plans were submitted for the commissioner's approval.

Performance Measures

2015/16 Sample Achievements

Satisfaction

Satisfaction with ethics executive orientation:

- Comprehensiveness – 85%
- Relevance – 89%
- Clarity – 88%
- Pace – 87%
- Appropriateness – 89%
- Overall – 89%

Efficiency

Provide quality advice, determinations and other supports within customer service targets:

- 95% of cases acknowledged within five business days
- 98% of cases resolved within 10 business days

Output

Activity in key areas of COIC mandate:

- 23 advice and determination letters produced
- 278 financial declarations reviewed
- 55 information requests received
- 1 set of agency ethics rules approved
- 10 presentations delivered
- 2 ethics executive orientation sessions held
- 75 ethics executives oriented

Objective 3: Be a leader in promoting Ethical conduct

The commissioner makes it a priority to interact with officials with comparable responsibilities, within and outside Ontario. This approach allows the commissioner to provide information on best practices that support the intent of the *PSOA*. This year, the COIC offered its knowledge and experience to the following organizations:

- City of Toronto as it implemented its ethics regime for municipal employees and
- Ministry of Municipal Affairs and Housing as it updated the Municipal Conflict of Interest Act.

The commissioner also published a quarterly online blog to share his thoughts, expertise and insights on current and emerging ethical issues for the benefit of the broader ethics community.

The COIC hosts periodic lunch-and-learns at its offices in which local experts (academics and practitioners) are invited to share their knowledge and experiences with COIC staff. This year, the Commissioner hosted two lunch-and-learn sessions focused on the City of Toronto — one examined the implementation of the City's new ethics bylaw and the other was a discussion with Valerie Jepson, the City's Integrity Commissioner.

Looking ahead:

2016/17 GOALS

Conference on Public Sector Ethics, September 29 and 30, 2016 in Toronto.

New **training videos** on preferential treatment and post-service obligations.

Illustrative Case Summaries

The following case summaries are examples of some of the inquiries or requests the commissioner addressed this year. These summaries are intended to assist public servants and ethics executives in interpreting the conflict of interest and political activity rules, and applying these rules to similar situations. The cases have of course been anonymized to protect privacy and confidentiality.

Conflict of Interest – Outside Activity

A senior public servant in a public body sought to become a member of a quasi-judicial committee of a municipality. The public servant intended to attend approximately one hearing per month from 10:00 am to 2:00 pm.

The commissioner had concerns about the activity because the committee could be dealing with matters relating to individuals associated with the public body. In order to minimize the potential interaction between the two roles, the Commissioner required the public servant to advise his ethics executive immediately if an individual who appeared before the committee became involved in a matter with the public body and prohibited the public servant from dealing with committee matters involving potential stakeholders of the public body. The Commissioner also directed the public servant to take a full vacation day when performing committee work that was scheduled to occur during the public servant's normal office hours, to ensure transparency.

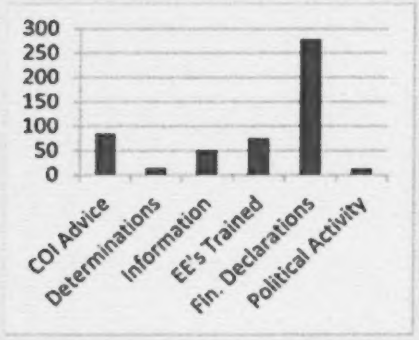
(O. Reg. 381/07, s. 8)

Conflict of Interest – Benefiting Self, Part 1

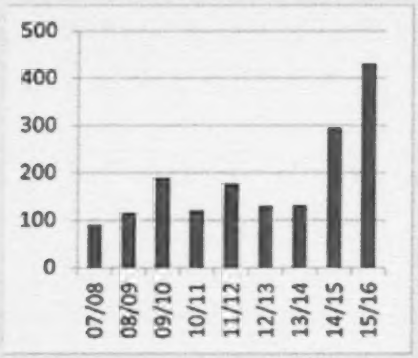
A public body wanted to appoint a chair who was also a recipient of one of the public body's programs and had a business partner already on the board.

The public body thought it was acceptable for some board members to be program recipients, as such members provided the board with expertise. The public body was aware of the potential for conflict and had developed systems to minimize the impact of such conflict, including limiting the involvement of the board in operational matters related to programs, and requiring members to declare any potential conflicts for the record of every board meeting and recuse themselves from certain discussions and decisions.

COIC 2015/16 ACTIVITY



MATTERS HANDLED ANNUALLY



Since the OCOIC was established in the fall of 2007, the Office has handled over 1,628 Matters.

The commissioner concluded that these measures could be applied to the new chair and additionally suggested that any potential conflict of interest or political activity matter relating to the chair's business partner be referred to the commissioner under section 65(6) of the PSOA.

(O. Reg. 381/07, s. 3, 6, 8 and 9)

Conflict of Interest – Benefiting Self, Part 2

After serving as a member of the board of a public body for twelve years, an individual, with the assistance of two lawyers, had published a citizen's guide to appearing before the public body. Recently, he was appointed chair of the same public body and was approached by the publisher to prepare a third edition of the guide.

Since the book was initially published long before the individual became chair, and during a period when he was not a public servant, it was the commissioner's view that s.3 of the Regulation (benefiting self, spouse or children) would not be contravened. The individual was not currently seeking to publish a guide for the first time while chair. For similar reasons, the commissioner believed the publication of the new edition was not a contravention of s. 8(5) of the Regulation. While the chair's association with the third edition as chair could hypothetically promote sales, the guide was initially published long before, and it was not the case that the individual was being sought out to promote sales of a new book.

The two lawyers who were assisting with research for the new edition sometimes practiced before the public body. To avoid the appearance of preferential treatment, the commissioner directed the individual to recuse himself from any hearing in which either of them appeared as parties.

(O. Reg. 381/07, s. 3, 6 and 8)

Appointees

The Commissioner, Sidney B. Linden is the only appointee in the Office of the Conflict of Interest Commissioner. He was first appointed July 30, 2007. His current term expires on July 30, 2017

More Information

More information about the COIC's mandate and activities can be found at: Office of the Conflict of Interest Commissioner of Ontario

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Toronto, ON M4W 3J5

Conflict of Interest – Post Service

A public servant formerly in a senior-designated position retired and was re-hired briefly, on contract, by a public body. Upon terminating this employment contract, the former public servant wanted advice about several post-service opportunities.

The intervening employment opportunity impacted the nature of the post-service obligations the public servant was subject to because technically the position that the public servant held immediately before ceasing to be a public servant was not a senior designated position and as such he was not subject to the more stringent lobbying and employment restrictions. The commissioner was concerned that this arrangement might appear to have been made to intentionally circumvent the more stringent restrictions. In order to avoid this perception, the commissioner recommended that the public servant be treated as though the lobbying and employment restrictions applied to him for one year following the original retirement.

(O. Reg. 381/07, s. 16-20)

Political Activity – Specially Restricted

A part-time member of an adjudicative tribunal sought advice from his ethics executive, the chair of the tribunal, whether he was able to continue to engage in political activity. The tribunal member had regularly been involved in partisan political activity prior to his appointment to the tribunal. The ethics executive sought the commissioner's guidance.

The commissioner advised the ethics executive that appointees to adjudicative tribunals were considered specially-restricted public servants, and therefore were subject to more stringent political activity restrictions than appointees to other public bodies.

The Act provides steps an ethics executive must take to deal with the contravention of political activity rules, including giving direction to an appointee.

The commissioner also advised the chair that the Act permits an ethics executive of a specially-restricted public servant to allow the public servant to be a candidate in a municipal election or to campaign on behalf of a municipal candidate. Furthermore, a part-time member of an adjudicative tribunal could seek authorization from the Conflict of Interest Commissioner to engage in most other kinds of political activity if, in the commissioner's opinion, such activity did not interfere with the appointee's public-service duties or conflict with the interest of the tribunal.

(PSOA, s.64, 72 and 89. O. Reg. 381/07, s.6)

Political Activity – Commentary

The ethics executive of a public body sought the commissioner's advice as to whether an employee of that public body should be allowed to publish an op-ed article that was critical of a policy of a political party. Since section 72(a) of the Act defines political activity as including anything done in support of or in opposition to a political party, the commissioner concluded that the writing of such an article would constitute political activity.

Section 70(1)(c) of the Act prohibits a public servant from engaging in certain kinds of political activity without first seeking a leave of absence without pay. Such prohibited political activity includes making public comments outside of a public servant's duties on a matter directly related to those duties, if the matter is addressed in the policy of a political party. The ethics executive was advised to consider whether the article met this test, in particular whether the content of the article overlapped with the area of work in which the public servant was engaged. If the test was met, the employee must then request an unpaid leave of absence in order to publish the article and deal with any associated matters.

The commissioner also reminded the ethics executive that section 79(d) of the Act prohibits a public servant from engaging in any political activity if doing so could interfere with the performance of his or her public duties, and that section 79(e) prohibited public servants from engaging in any political activity if doing so could conflict with the interests of the public body.

(PSOA, s. 72 and 79)

Financial Information for Fiscal Year 2014-15

Standard Account	2014-15* Appropriations	Actual Expenditures
Salaries and Wages	482,700	406,350
Employee Benefit	65,000	35,928
Transportation and Communication	22,000	28,551
Services	309,700	401,046
Supplies and Equipment	6,000	3,197
Subtotal:	$ 885,400	$ 875,073
TOTAL	**$ 885,400**	**$ 875,073**

* Represents 14-15 Expenditure Estimates and in-year approvals.

Financial Information for Fiscal Year 2015-16

Standard Account	2015-2016* Appropriations	Actual Expenditures
Salaries and Wages	482,700	442,956
Employee Benefits	50,600	40,816
Transportation and Communication	22,000	9,483
Services	281,800	331,763
Supplies and Equipment	6,000	1,939
Subtotal:	$ 843,100	$ 826,957
TOTAL	**$ 843,100**	**$ 826,957**

Represents 2015-16 Expenditure Estimates and in-year approvals.